

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO	)	
WHOLESALE WATER RATES CHARGED BY	)	
THE CITY OF CARLISLE TO SHARPSBURG	)	CASE NO.
WATER DISTRICT AND NICHOLAS COUNTY	)	2021-00382
WATER DISTRICT PURSUANT TO KRS 278.200,	)	
KRS 278.160, KRS 278.180, KRS 278.190 AND	)	
807 KAR 5:011	)	

ORDER

On October 20, 2021, the Commission entered an Order, on its own motion, initiating this case to investigate whether the city of Carlisle (Carlisle) charged its wholesale customers, Sharpsburg Water District (Sharpsburg District) and Nicholas County Water District (Nicholas District), unauthorized rates in violation of KRS 278.160 and to investigate the reasonableness of a proposed increase in Carlisle's wholesale rates filed on September 30, 2021. On March 29, 2022, the Commission issued an Order approving Carlisle's proposed wholesale rate increase for service rendered on and after the date of the Order. On June 21, 2022, the Commission issued an Order finding that Carlisle overcharged Nicholas District and Sharpsburg District by \$7,087.72 and \$2,092.50, respectively, but allowed the parties 30 days to respond that Order with proposed corrections or changes. None of the parties responded to the Commission's June 21, 2022 Order or otherwise objected to its findings. This matter is now before the Commission for a final Order.

BACKGROUND

Carlisle entered into a contract for wholesale water service with Sharpsburg District on November 13, 1989,<sup>1</sup> and a contract for wholesale water service with Nicholas District on January 25, 1993.<sup>2</sup> Both contracts have a term of 40 years and established initial rates based on the volume delivered.<sup>3</sup>

On March 18, 2019, Carlisle tendered a tariff to the Commission reflecting the following wholesale water rates for service provided to Nicholas District and Sharpsburg District:<sup>4</sup>

First 1,000 gallons	\$11.21 Minimum Bill
Next 4,000 gallons	3.82 per 1,000 gallons
Next 5,000 gallons	2.95 per 1,000 gallons
Next 5,000 gallons	2.05 per 1,000 gallons
Next 10,000 gallons	1.90 per 1,000 gallons
Next 25,000 gallons	1.58 per 1,000 gallons
Over 50,000 gallons	1.52 per 1,000 gallons

Carlisle charged the rates in the tariff tendered on March 18, 2019, until July 2020. At that time, Carlisle raised its rates for service provided to Nicholas District and Sharpsburg District pursuant to a city ordinance,<sup>5</sup> which increased Carlisle’s water, sewer,

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<sup>1</sup> Direct Testimony of Gayle Haney (Haney Testimony) (filed Dec. 1, 2021) at 4, Exhibit A (Sharpsburg District Contract).

<sup>2</sup> Order, Appendix B (Ky. PSC Oct. 20, 2021) (Nicholas District Contract).

<sup>3</sup> See Sharpsburg District Contract; Nicholas District Contract.

<sup>4</sup> Order, Appendix C (Ky. PSC Oct. 20, 2021) (containing tariff stamped as received on March 18, 2019).

<sup>5</sup> See Hearing Video Transcript (HVT) of the Apr. 14, 2022 Hearing at 11:13:44–11:14:30 (in which Sharpsburg District’s witness stated that their rate was increased in July 2020 without notice); HVT of the Apr. 14, 2022 Hearing at 09:59:15–09:59:39; 10:03:00–10:05:15; 10:09:47–10:10:10 (in which Carlisle’s witness acknowledged that a “cost of living adjustment” was made to wholesale rates effective July 2020 pursuant to an existing ordinance); Carlisle’s Response to Commission’s October 20, 2021 Order, Exhibit 4 (filed Nov. 9, 2021) (containing the ordinance referenced by Carlisle’s witness).

and trash collection rates based on the Consumer Price Index.<sup>6</sup> On August 16, 2021, after the Commission was informed of a dispute between the parties, Commission Staff sent a letter to Carlisle advising them, among other things, that an increase in wholesale water rates between a city and regulated utility must be made in accordance with KRS 278.180 and 807 KAR 5:011.<sup>7</sup>

On September 30, 2021, Carlisle filed a revised tariff with an effective date of October 31, 2021, reflecting the following wholesale water rates to Nicholas District and Sharpsburg District:

First	1,000 gallons	\$14.91 Minimum Bill
Next	4,000 gallons	5.08 per 1,000 gallons
Next	5,000 gallons	3.92 per 1,000 gallons
Next	5,000 gallons	2.73 per 1,000 gallons
Next	10,000 gallons	2.53 per 1,000 gallons
Next	25,000 gallons	2.10 per 1,000 gallons
Over	50,000 gallons	2.02 per 1,000 gallons

The October 20, 2021 Order in this matter suspended that rate through March 30, 2022. The March 29, 2022 Order then approved Carlisle's proposed wholesale rate increase for service rendered on and after March 29, 2022, but did not address whether Carlisle charged unauthorized rates in violation of KRS 278.160.

A hearing was held on April 14, 2022, for the purpose of taking evidence regarding whether Carlisle charged unauthorized rates in violation of KRS 278.160.<sup>8</sup> At the beginning of the April 14, 2022 hearing, Carlisle's counsel stipulated that Carlisle

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<sup>6</sup> Carlisle's Response to Commission's October 20, 2021 Order, Exhibit 4.

<sup>7</sup> Order (Ky. PSC Oct. 20, 2021), Appendix D.

<sup>8</sup> Order (Ky. PSC Mar. 29, 2022) at 6 (noting that the purpose of the April 14, 2022 hearing to address the investigation into Carlisle's alleged unauthorized charges to Sharpsburg District and Nicholas District).

overcharged Nicholas District and Sharpsburg District and that Carlisle will credit those overcharges back, but he did reserve the right to argue that the wholesale water service contracts permitted the city to increase rates based on the ordinance alone without filing an updated schedule containing rates with the Commission.<sup>9</sup> Sharpsburg District's witness indicated at the hearing that the overbilling began in July 2020 and that they were overbilled \$2,092.44 from July 2020 through the end of March 2022 when the new rate went into effect pursuant to the March 29, 2022 Order.<sup>10</sup>

Billing records provided by Carlisle, Nicholas District and Sharpsburg District indicate Carlisle increased its wholesale rates beginning in July 2020 above those in the rate schedule tendered on March 18, 2019. Specifically, the billing records indicate that in July 2020 Carlisle began billing based roughly on the rate schedule below,<sup>11</sup> which was provided by Carlisle to Sharpsburg District after Sharpsburg District inquired about the increased rate.<sup>12</sup>

First	1,000 gallons	\$11.48 Minimum Bill
Next	4,000 gallons	3.96 per 1,000 gallons
Next	5,000 gallons	3.02 per 1,000 gallons
Next	5,000 gallons	2.10 per 1,000 gallons
Next	10,000 gallons	1.95 per 1,000 gallons
Next	25,000 gallons	1.61 per 1,000 gallons
Next	50,000 gallons	1.56 per 1,000 gallons
Over	100,000 gallons	1.58 per 1,000 gallons

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<sup>9</sup> HVT of the Apr. 14, 2022 Hearing at 9:26:34–9:27:50

<sup>10</sup> HVT of the Apr. 14, 2022 Hearing at 11:18:00–11:18:30.

<sup>11</sup> See Carlisle's Response to Commission Staff's First Request for Information (filed Jan. 18, 2022), Item 1, Exhibits 10-A-1, 10-A-2, 10-A-3, 10-A-4, and 10-B; Carlisle's Response to Commission Staff's Post Hearing Request for Information (filed Mar. 16, 2022), Item 6(d); Nicholas District's Response to Commission Staff's Third Post-Hearing Request for Information (Nicholas District's Response to Staff's Third Post-Hearing Request) (filed May 5, 2022), Items 2 and 3; Sharpsburg District's Response to Commission Staff's Second Post-Hearing Request for Information (Sharpsburg District's Response to Staff's Second Post-Hearing Request) (filed Apr. 21, 2022), Item 2.

<sup>12</sup> Haney Testimony at 4-5, Exhibit D.

Further, the records indicate that Carlisle again increased its rates for bills issued in August 2021.<sup>13</sup> However, for bills issued in August 2021, the records indicate Nicholas District ultimately only paid an amount based on the rate schedule Carlisle began using in July 2020,<sup>14</sup> and Sharpsburg District only paid an amount based on the tariff tendered on March 18, 2019.<sup>15</sup> Starting with bills issued in September 2021, the records indicate Carlisle reverted back to charging Nicholas District and Sharpsburg District based on the rate schedule they began using in July 2020.<sup>16</sup> The month-by-month detail showing the amounts billed to each district in each month based on the records provided and what the bill would have been if the rates in the tariff tendered on March 18, 2019 had been charged is included as an Appendix to this Order.<sup>17</sup>

On June 21, 2022, the Commission entered an Order finding that Carlisle increased its rates in July 2020 without properly adjusting its rate schedule pursuant KRS 278.180 and 807 KAR 5:011; that Nicholas District and Sharpsburg District were

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<sup>13</sup> See Nicholas District's Response to Commission Staff's Second Post-Hearing Request for Information (filed February 28, 2022), Exhibit 1d at unnumbered page 33; Sharpsburg District's Response to Staff's Second Post-Hearing Request, Item 2 at unnumbered page 23.

<sup>14</sup> Nicholas District's Response to Staff's Third Post-Hearing Request, Item 3, Exhibit 2 at unnumbered page 11.

<sup>15</sup> Sharpsburg District's Response to Staff's Second Post-Hearing Request, Item 2 at unnumbered page 23.

<sup>16</sup> Nicholas District's Response to Commission Staff's Second Post-Hearing Request for Information (filed Feb. 28, 2022), Exhibit 1d at unnumbered pages 34–40; Sharpsburg District's Response to Staff's Second Post-Hearing Request, Item 2 at, unnumbered pages 24–31.

<sup>17</sup> For the January 2022 bill to Nicholas District, there was an unexplained discrepancy of \$688.19 between the actual amount billed to Nicholas District (\$9,310.85, including late fees and 911 fees)<sup>17</sup> and the amount paid by Nicholas District (\$8,622.66). The amount that should have been billed based on the approved rate schedule was \$8,966.57. As the record does not show that Nicholas District paid the unexplained discrepancy of \$688.19, and the amount paid by Nicholas District was less than the amount that should have been billed in accordance with the approved rate schedule, the Commission has not included the January 2022 information in the calculation of the overcharge related to Nicholas District. See Order (Ky. PSC Jun. 21, 2022) at 6-7.

overcharged by Carlisle in the amount of \$7,087.72 and \$2,092.50, respectively, for the period from July 2020 through April 2022; and that the overcharges should be reimbursed to the districts by a monthly bill credit evenly allocated over the next 6 monthly billing periods or a single billing period. Pursuant to the procedure discussed at the April 14, 2022 hearing, the Order also permitted any party to file comments regarding the overcharge finding or refund schedule, and stated that an Order in accord with the findings therein would be issued if no comments were received within 30 days. No party has filed comments in response to the Commission's June 21, 2022 Order.

### LEGAL STANDARD

The Commission has exclusive jurisdiction over the rates and service of utilities and is charged with enforcing the provisions of KRS Chapter 278.<sup>18</sup> KRS 278.260 provides that the Commission, on its own motion, may investigate whether “any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable.”

A city owned utility is generally exempt from the Commission's exclusive jurisdiction over utility rates and services.<sup>19</sup> However, pursuant to KRS 278.200, the Commission may, under the provisions of KRS Chapter 278:

[O]riginate, establish, change, promulgate and enforce any rate or service standard of any utility that has been or may be fixed by any contract, franchise or agreement between the utility and any city, and all rights, privileges and obligations arising out of any such contract, franchise or agreement,

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<sup>18</sup> See KRS 278.040(1), (2).

<sup>19</sup> See KRS 278.010(3) (excluding city utilities from the definition of utilities subject to Commission jurisdiction).

regulating any such rate or service standard, shall be subject to the jurisdiction and supervision of the commission.<sup>20</sup>

In *Simpson County Water District v. City of Franklin*, the Kentucky Supreme Court held that a city providing utility service loses its exemption and “is rendered subject to the PSC rates and service regulation” pursuant to KRS 278.200 when it enters into a contract to provide wholesale utility service to a public utility subject to the Commission’s jurisdiction.<sup>21</sup>

KRS 278.160(1) requires each utility to “file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it.”<sup>22</sup> Commission regulations prescribe that a utility’s schedule showing all rates and conditions for service be filed in the form of a tariff, or in the form of a special contract establishing rates, charges, or conditions of service not contained in its tariff.<sup>23</sup> KRS 278.160(2) prohibits a utility from charging “greater or less compensation for any service rendered or to be rendered than that prescribed in its

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<sup>20</sup> KRS 278.200.

<sup>21</sup> *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460, 463 (Ky. 1994); see also *City of Russellville v. Public Service Com’n of Kentucky*, No. 2003-CA-002132-MR, 2005 WL 385077 (Ky. App. Feb. 18, 2005) (unpublished) (in which the court found that a city’s failure to provide water districts notice and file a proposed wholesale rate increase for water districts pursuant to the provisions of KRS Chapter 278 and 807 KAR 5:011 prevented the city from charging the rate).

<sup>22</sup> KRS 278.160; see also Administrative Case No. 351 *Submission of Contracts and Rates of Municipal Utilities Providing Wholesale Utility Service to Public Utilities* (Ky. PSC Sept. 10, 1994) (in which the Commission entered an Order requiring that “each municipal utility providing wholesale utility services to a public utility shall submit to the Commission a copy of its contract for such service and a schedule of its wholesale rates” following the decision in *Simpson County Water District*).

<sup>23</sup> See 807 KAR 5:011 (generally setting forth the requirement that schedules containing rates be filed in the form of a tariff); 807 KAR 5:011, Section 13 (requiring that utilities file a copy of any “special contract” establishing rates, charges, or conditions of service not contained in its tariff); see also

filed schedules.” A utility is prohibited from increasing a rate in its filed schedules without 30 days-notice to the Commission (or 20 days-notice upon a showing of good cause).<sup>24</sup>

### DISCUSSION

There is no dispute that Carlisle increased its rates in July 2020 as compared to the rates in its tariff tendered on March 19, 2019, because Carlisle has acknowledged that it did so. Further, there is no evidence that Carlisle provided the districts prior notice of the July 2020 rate increase, which would have allowed them to immediately pass along the wholesale rate increase to their customers as contemplated by KRS 278.015, and there is no evidence Carlisle filed a tariff or amended contract prior to September 30, 2021 proposing to increase rates pursuant to KRS 278.180 and 807 KAR 5:011.<sup>25</sup> Thus, Carlisle violated KRS 278.160(2) between July 2020 and April 2022 by charging more for service to Nicholas District and Sharpsburg District than prescribed in its filed schedules.

Records provided by the parties indicate Nicholas District and Sharpsburg District were overcharged in the amount of \$7,087.72 and \$2,092.50, respectively, for the period from July 2020 through April 2022. Additionally, no party filed comments or objected to the Commission’s findings in the June 21, 2022 Order regarding the extent to which the districts were overcharged from July 2020 through April 2022. Thus, having reviewed the record and being otherwise sufficiently advised, the Commission finds that Nicholas

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<sup>24</sup> See KRS 278.180(1).

<sup>25</sup> See HVT of the Apr. 14, 2022 Hearing at 11:13:44–11:14:30 (in which Sharpsburg District’s witness stated that they received no noticed of the wholesale rate increase); HVT of the Apr. 14, 2022 Hearing at 10:25:52–10:27:00 (initially indicating that the water districts would have been notified of the increase when they received the bill but later indicating that they may have received other notice through a phone call or in writing); HVT of the Apr. 14, 2022 Hearing at 09:59:39–09:59:50 (in which Carlisle’s witness indicated that they had filed an amended tariff a few months back—presumably referring to the filed on September 30, 2021).

District and Sharpsburg District were overcharged by Carlisle in the amount of \$7,087.72 and \$2,092.50, respectively, for the period from July 2020 through April 2022 and that Carlisle shall refund those overcharges to the districts with a bill credit evenly allocated over the next six months, or in Carlisle's discretion, with a single credit of the total overcharge in the next month.<sup>26</sup>

IT IS THEREFORE ORDERED that:

1. Carlisle shall refund Nicholas District for overcharges that occurred between July 2020 and April 2022 in the amount of \$7,087.72 with a bill credit evenly allocated over the next six months, or in Carlisle's discretion, with a single credit of the total overcharge in the next month.

2. Carlisle shall refund Sharpsburg District for overcharges that occurred between July 2020 and April 2022 in the amount of \$2,092.50 with a bill credit evenly allocated over the next six months, or in Carlisle's discretion, with a single credit of the total overcharge in the next month.

3. This case is closed and removed from the Commission's docket.

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<sup>26</sup> The Commission recognizes that it only has billing records through April 2022 and that Carlisle may have reimbursed the districts following the June 21, 2022 Order, because it filed no comments or objections to that Order. If it refunded all or a portion of the overcharge following the June 21, 2022 Order, then it shall only be required to reimburse any of the remaining balance through a bill credit evenly allocated over the next six months or a single credit in the next month.

PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Vice Chairman

  
\_\_\_\_\_  
Commissioner



ATTEST:

  
\_\_\_\_\_  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2021-00382 DATED NOV 14 2022

Carlisle Billings to Nicholas District

<b>Month</b>	<b>Amount Billed</b>	<b>Amount that Should Have Been Billed</b>	<b>Amount Overcharged</b>
July 2020	\$8,185.91	\$8,077.19	\$108.72
August 2020	8,211.14	7,908.65	302.49
September 2020	7,316.93	7,048.41	268.52
October 2020	9,595.29	9,240.24	355.05
November 2020	8,597.70	8,279.71	317.99
December 2020	9,949.31	9,580.82	368.49
January 2021	9,484.73	9,132.23	352.50
February 2021	11,220.65	10,801.35	419.30
March 2021	10,473.69	10,083.48	390.21
April 2021	8,418.09	8,110.61	307.48
May 2021	8,376.64	8,069.62	307.02
June 2021	9,782.05	9,421.66	360.39
July 2021	15,672.62	15,087.77	584.85
August 2021	12,600.77	12,132.58	468.19
September 2021	9,242.61	8,902.97	339.64
October 2021	7,403.99	7,133.15	270.84
November 2021	8,275.05	7,971.13	303.92
December 2021	9,533.68	9,181.96	351.72
January 2022			
February 2022	6,954.16	6,698.00	256.16
March 2022	10,909.84	10,503.47	406.37
April 2022	6,735.80	6,487.93	247.87
<b>Totals</b>	<b>\$196,940.65</b>	<b>\$189,852.93</b>	<b>\$7,087.72</b>

Carlisle Billings to Sharpsburg District

<b>Month</b>	<b>Amount Billed</b>	<b>Amount that Should Have Been Billed</b>	<b>Amount Overcharged</b>
July 2020	\$3,196.63	\$3,154.42	\$42.21
August 2020	3,219.75	3,100.31	119.44
September 2020	2,832.18	2,727.45	104.73
October 2020	3,062.70	2,949.22	113.48
November 2020	2,572.90	2,478.02	94.88
December 2020	2,842.29	2,737.18	105.11
January 2021	2,464.51	2,373.75	90.76
February 2021	3,082.61	2,968.37	114.24
March 2021	3,244.87	3,124.48	120.39
April 2021	3,558.98	3,426.65	132.33
May 2021	2,486.31	2,394.73	91.58
June 2021	2,806.11	2,702.37	103.74
July 2021	4,117.23	3,963.52	153.71
August 2021	2,703.74	2,703.74	0.00
September 2021	3,025.14	2,912.89	112.25
October 2021	2,777.55	2,674.71	102.84
November 2021	3,005.39	2,893.89	111.50
December 2021	2,878.20	2,771.53	106.67
January 2022	2,136.86	2,058.35	78.51
February 2022	1,716.26	1,653.73	62.53
March 2022	1,814.54	1,748.27	66.27
April 2022	1,789.89	1,724.56	65.33
<b>Totals</b>	<b>\$61,334.64</b>	<b>\$59,242.14</b>	<b>\$2,092.50</b>

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